IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 201 OF 1988.

The State of Maharashtra. .... Appellant.

Versus.

1. Sadashiv Anantrao Karne,
Age about 30 years, R/o.
Airoli, Ta.& Dist.Thane.

2. Hanumant Narhari Shinde,
Age about 28 years, R/o.
Mhapa Zopadpatti,
Tal.& Dist. thane. .... Respondents.
(Org.Accused.)

Shri I.S.Thakur, A.P.P. for the Appellant.

Shri Ganesh Gole for the Respondents.

CORAM ; SMT.RANJANA DESAI, &
ABHAY S. OKA, JJ.

DATED : 24th Setpember, 2004.

ORAL JUDGMENT.

1. This appeal is preferred by the State under section 378(1) of the Code of Criminal Procedure, 1973, for challenging the Judgment and order dated 21st November 1987 passed by the learned Additional Sessions Judge, Thane, by which the Respondents were acquitted of the offences punishable under section 376 of the Indian Penal Code. This is a case which demonstrates a total neglect on the part of the investigating agency and the

Medical Officer. This case illustrates the total lack of sensitivity on the part of the Police machinery and the Medical officers of the State Government while dealing with a case of a serious offence against a woman.

2. The case of the prosecution is that the prosecutrix Mangala Gopal Chaudhari was residing at village Mahape, Taluka and District Thane. In April 1985 she was working as a maid servant in the house of one Shri Patwardhan who was a resident in the residential colony of the National Organic Chemical Industries Ltd. (hereinafter referred to as NOCIL Colony) situated at Thane Belapur Road, Taluka and District Thane. The prosecutrix was residing alone in a room at village Mahape. Though she was married with one Gopal Chaudhari she was residing alone. From 24th April 1985 she was sick. On 26th April 1985 at about 5.00 p.m. while she was at her room, the Accused No.2 came to her room and told her that her employer Shri Patwardhan has called her immediately. According to the Prosecution, the Accused No.2 was residing close to her house. The Prosecutrix told Accused No.2 that she was sick and she would join duty after she recovers from sickness. On the morning of 27th April 1985 the Prosecutrix met Shri Patwardhan and told him that she would resume her duty

on the next day. In the evening of 27th April 1985 Accused No.2 again came to the Prosecutrix and informed her that she had been called by the wife of one Harishchandra Patil and the said Accused told the Prosecutrix to meet the wife of Harishchandra Patil. Therefore, the Prosecutrix at about 9.30 p.m. came near the S.T. stand in order to proceed to the house of Savita wife of Harishchandra Patil. At that time both the Accused came by bicycle and told the Prosecutrix that she has been called by the said Savita. The Accused told the Prosecutrix that she may not get a bus for going to the house of Savita Patil who was residing at Nocil Colony and therefore, the Prosecutrix should accompany them. However, the Prosecutrix informed them that she would like to come by bus. According to her, the Accused addressed her as their sister and requested her to accompany them. According to the Prosecutrix there was darkness at that time and there was no one else on the S.T.bus stop. The Prosecutrix refused to accompany the Accused. The Accused kept their bicycle aside and both of them caught hold of Prosecutrix by arms. Both of them dragged the Prosecutrix and while doing so they told the Prosecutrix to keep quiet. The Accused forcibly took the Prosecutrix to the side of a wall of the godown in the open space. When the Prosecutrix tried to raise alarm, the Accused No.2 shut

her mouth with his hand. Accused No.2 caught hold of her hands and legs and Accused No.1 removed all the clothes on her person. Thereafter Accused No.1 pushed the Prosecutrix on the ground and committed rape on her. According to the Prosecutrix at that time Accused No.2 was holding her hands and he had shut her mouth with his hands. Her case is that Accused No.1 thereafter told the Accused No.2 not to touch her body and therefore, Accused No.2 did not commit any rape on her. Thereafter both the Accused allowed her to dress and brought her to S.T.stop. There the Accused threatened her that in case she disclosed the incident to any one, they would inform the local leader Ganesh Naik that the Prosecutrix is a woman of loose morals and thereafter she will be removed from her residential accommodation. The Prosecutrix started towards her house from the S.T. stand and both the accused followed her. The Accused No.2 told the Prosecutrix that he intends to sleep with the Prosecutrix in the night. When the Prosecutrix reached her room, she told both the Accused that in case they again tried to molest her she would raise hue and cry.

Therefore, both the Accused went away.

3. The case of the Prosecutrix is that she narrated the incident on the next day in the morning to her landlady. Her landlady advised the Prosecutrix to meet the

Sarpanch and her employer. Accordingly the Prosecutrix, she went to the house of one Savita Patil, and narrated incident to her. The said Savita Patil in turn advised the Prosecutrix to narrate the incident to Shri Patwardhan. When she reached the house of this Patwardhan, he had already left for duty. She narrated the incident to Mrs.Patwardhan's Paternal aunt who told her to meet the Security Officer of the NOCIL factory. Therefore, the Prosecutrix reached the security gate of the factory where one Ramesh Patil was present and she narrated the incident to Shri Ramesh Patil. The said Ramesh Patil called Accused No.1, who was on duty at that time in the NOCIL company and asked his explanation. Accused No.1 denied to have done anything. Shri Ramesh Patil gave phone message to Rabale Police Station and one Head Constable attached to Rabale Police Station came to the security gate. The said Ramesh Patil narrated the incident to the Head Constable and thereafter Ramesh Patil sent the Prosecutrix to the Police Station in a Jeep. Accordingly F.I.R. was recorded at the Police Station.

4. The case of the Accused appears to be that the Prosecutrix was acquainted with the Accused No.2 and she wanted to marry with Accused No.2. Their case is that the Accused No.1 aborted the said attempt of the

Prosecutrix and therefore, the Prosecutrix falsely implicated both the Accused in the case.

5. The prosecution examined the Prosecutrix (P.W.1), Savita Harishchandra Patil (P.W.2), Panch witness Ramesh Tukaram Jadhav (P.W.3), Medical Officer Dr.M.C.Nagare (P.W.4), and the Investigating officer Shri Laxman Ananta Patil (P.W.5). The prosecution also produced and relied upon various reports of the Chemical Analyser to which reference will be made at a later stage.

6. The learned A.P.P. Shri Thakur appearing for the Appellant-State submitted that the learned Sessions Judge could not have discarded the testimony of the prosecutrix. He submitted that there were hardly any material omission and contradiction in the evidence of the Prosecutrix and the conviction could have been based on the sole testimony of the Prosecutrix. He submitted that considering the nature of the evidence and the situation in which the Prosecutrix was placed her evidence could not have been discarded only on the basis of some minor discrepancies and contradictions. He submitted that considering the fact of the case, there is hardly any delay in recording the F.I.R. He has taken us through the notes of evidence and the impugned Judgment and Order. He criticized various findings

recorded by the learned Sessions Judge. He was also critical of the approach of the learned Sessions Judge. Shri Thakur also relied on various Judgments of the Apex Court to which reference will be made later on.

7. Shri Gole appearing for the Respondents has supported the impugned Judgment and Order. He submitted that though in a given case conviction under section 376 of the IPC can be based on the sole testimony of the Prosecutrix, he submitted that in the facts of this case, the evidence of the Prosecutrix is most unreliable and the medical evidence does not support the version of the Prosecutrix. He submitted that this being an appeal against acquittal merely because two views are possible to be taken on the basis of the evidence on record, the findings recorded by the learned Sessions Judge cannot be disturbed.

8. We have carefully considered the submissions of the learned Counsel appearing for the parties. We have also perused the notes of evidence and the documents admitted in evidence by the learned Sessions Judge. We have also perused the impugned Judgment and Order. P.W.1 has narrated the incident as per the prosecution story which is narrated in the earlier paragraph Nos 2 and 3. She has been cross-examined in detail by the Advocate for

the Accused. In the cross-examination the Prosecutrix has stated that while she was being dragged from S.T.bus stop to the place of incident she had not fallen down on the ground. She stated that in the process of dragging she sustained injury to her leg, elbow and knee. In examination-in-chief she stated that all her clothes were removed, but in the cross-examination she stated that all her clothes were not removed. She stated that no part of her sari or petticoat was torn on account of rough and hard surface at the place of the incident. Certain omissions were brought on record in the cross-examination. The case of the Accused that the Prosecutrix was intending to marry Accused No.2 which was opposed by the Accused No.1 was put to her and she denied the correctness thereof.

9. P.W.2 Savita Harishchandra Patil is the landlady of the Prosecutrix. She deposed that the Prosecutrix was earlier residing in the room owned by her along with her husband for a period of about six months. She stated that the husband of the Prosecutrix has deserted her and thereafter she was residing alone in the room for some days. Subsequently she left the room and started residing in the hutment at Mahape. She narrated that on 29th April 1985 at about 8.00 a.m. the Prosecutrix came to her house and started weeping. The Prosecutrix told

her the incident of the earlier night. The witness stated that she took the Prosecutrix to the NOCIL colony where Shri Ramesh Patil was present to whom the Prosecutrix narrated the entire incident. She stated that Ramesh Patil sent for the Police by sending a jeep and the Police arrived in that jeep in the colony and took the Prosecutrix to the Police Station. In the cross-examination a question was asked to her as to why she along with her husband and the Prosecutrix did not directly go to the Rabale Police Station. Her reply was that since the accused were working in NOCIL company they decided to go to the gate of NOCIL colony.

10. P.W.3 Ramesh Tukaram Jadhav is a panch witness to the scene of offence panchanama. In the cross-examination he stated that pieces of bangles were found at some distance from the compound wall of the MIDC. He stated that at a distance of about 20 feet from the Western Side of the Mahape S.T.stop there are two houses and in one of the houses there is a grocery shop.

11. P.W.4 is Dr.Mahendra Nagare who deposed about the injuries on the person of the Prosecutrix. He stated that he was a gynaecologist and was at the relevant time working as Medical Officer in the Civil Hospital at

Thane. He stated that he examined the prosecutrix and noticed that the prosecutrix was habituated to sexual intercourse and it was difficult to ascertain whether she had forceful intercourse in the recent past. He stated that she did not reveal any signs of fresh sexual intercourse. He deposed that there were following injuries on the person of the prosecutrix:

1. Abrasion - contusion over angle of left mandible 1-1/2" x 1/4", accused by hard and blunt object. 2. Abrasion over dorsum of right elbow 1/2". 3. Laceration over medial a spect or right wrist 1". 4. Four small scratch marks over dorsum of left elbow.

In the cross-examination he stated that if the victim girl was raped on the rough ground with her back, buttocks, thighs and feet touching the surface then she was expected to sustain injuries to the above parts of her body. He, however, deposed that if a married woman habituated to sexual intercourse is raped by a single person, it is not necessary that there would be injuries to her external genitals and internal part i.e. vagina.

12. P.W.5 is investigating officer Laxman Ananda Patil.

He admitted that in the complaint at Exh.19 the prosecutrix has not stated that on 29th April 1985 she met Savita Harishchandra Patil and narrated the incident to her. The witness recorded supplementary statement of the prosecutrix. He stated that he did not enquire whether on 29th April 1985 Ramesh had given telephonic message to Rabale Police Station before sending a jeep.

13. The documentary evidence is in the form of medical certificate at Exh.25 dated 29th April 1985 issued by the Medical Officer Dr.Mahendra Nagare. He certified that there were four injuries on the person of the prosecutrix. The other documentary evidence is in the form of Chemical Analyser's reports. The report at Exh.32 is in respect of blood sample, semen sample and pubic hair of the Accused No.1. The report is that blood group of the blood sample and the semen sample could be determined and no semen was detected on the pubic hair. Exh.32 is the report of the Chemical Analyser in respect of blood sample, semen sample and pubic hair of Accused No.2. The findings of the Chemical Analyser are identical. Exh.30 is the Chemical Analyser's report in respect of three articles. The first article is the pettycoat of prosecutrix. The report about this article is that there was one semen stain of about 8 cms. in diameter in the middle, one

semen stain of about 3 cms., two semen stains each of about 1 cm. in diameter situated on front side middle portion and the stains of semen were of blood group B. The report further states that no semen stains were found on the undergarments of the accused.

14. The learned Counsel appearing for the Respondents has made submission regarding the inordinate delay in lodging the F.I.R. The incident took place after 9.30 p.m. on 27th April 1985. It is the case of the prosecutrix that both the accused accompanied her to upto her residence after the incident. After undergoing such insult and agony the Prosecutrix was not expected to leave her hut late in the night and travel to Rabale Police Station alone. She must have been completely shattered by that time. Immediately in the morning on the next day she met her erstwhile landlady, who advised her to meet her employer. She thereafter attempted to meet her employer. She thereafter proceeded to meet P.W.2 Savita who took her to NOCIL company security gate where they met Shri Ramesh Patil and thereafter the FIR was lodged. In a case of this nature, where the offence is allegedly committed under section 376 of the IPC, late in the night, and when the prosecutrix was living all alone in her hut, there is nothing unnatural if she did not visit the Police Station which is far away from

her hut and chose to report the matter to her earlier landlady who was known to her and to her employer. Considering the natural course of her conduct and especially the position in which the prosecutrix was placed the delay in recording the F.I.R. is not at all fatal by any stretch of imagination.

15. The Prosecutrix stated that from S.T.Stop to the compound of the MIDC she was dragged by both the Accused. She stated that she was dragged on the katcha road by the side of the tar road and in the process of dragging she sustained injuries to her legs, elbow, and to her knee. She stated that when rape was committed her back, buttocks, and legs were touching the ground and her above parts were being rubbed on the ground. She stated that the place of offence was rough and hard. She stated that when rape was being committed on her, she was trying to bite the Accused No.1 though her mouth was shut and her hands were caught hold by the Accused No.2. She also admitted that she did not sustain any injury to her mouth or to her hands. In examination-in-chief she tried to state that all her clothes on her body were removed. However, in the cross-examination she has made a contradictory statement.

16. Looking to the fact that the incident took place at a place where the surface was rough and hard and considering the statement of the Prosecutrix that her back, thigh, buttocks and legs were roughed up against the surface during the incident, there should have been some injury on the said parts of the body. However, evidence of P.W.4 Dr.Nagare discloses that there were only four injuries on her person. The first injury is an abrasion on the left mandible, the second injury is also a abrasion over dorsum of right elbow, the third injury is a laceration over right wrist and the fourth injury is a small scartch over left elbow. The Prosecutrix admitted that while she was being dragged to the place of offence she sustained an injury to her knee and feet. The evidence of P.W.4 discloses that there were no injuries on her back, buttocks, and legs.

17. Semen stains were detected at three places on the front portion of the petticoat of the Prosecutrix. All the semen strains were of a person having blood group "B". Unfortunately the report of the Chemical Analyser says that the blood group of the Accused could not be determined.

18. Time and again the Apex Court has held that in case of offence under section 376 IPC the evidence of the

victim of sexual assault does not need corroboration and conviction can be founded on her testimony alone. For compelling reasons the Court may look for some assurance of her statement to satisfy its judicial conscious. The Apex Court has held that minor contradictions or insignificant discrepancies in the statement of the Prosecutrix could not be a ground for throwing out an otherwise reliable prosecution case.

19. Considering entire evidence on record, we are of the opinion that some of the discrepancies and contradictions in the evidence of the Prosecutrix cannot be said to be insignificant and minor. Therefore, we are required to look for some assurance of her statement to satisfy our judicial conscious. However, there is no material on record from which such assurance can be gathered. The most crucial aspect is that the Medical Officer has not found injuries on her back, buttocks and legs. Looking to the nature of the incident alleged, if there were no major injuries on the said parts of her body, atleast some abrasions ought to have been found. In so far as the report of the Chemical Analyser is concerned, no assurance can be derived from that as there is no evidence to show that the blood group of the Accused was "B". Shri Ramesh Patil to whom the Prosecutrix narrated the incident and at whose instance

Police were called has not been examined. There is much to be said about the Medical Officer P.W.4 and the negligence of the Investigating machinery. We have adverted to that in the subsequent paragraphs of our judgment.

20. Suffice is to say that in the present case it is very difficult to convict the Accused on the sole testimony of the Prosecutrix when there is no other evidence on record from which assurance could be derived to support the statement of the Prosecutrix. The Apex Court has recently held that every defect in the investigation or irregularity in the investigation need not necessarily lead to rejection of the case of the prosecution when it is otherwise proved. In the present case deficiencies and irregularities in investigation go to the root of the matter and are of such nature that we find it impossible to seek assurance to the version of the Prosecutrix. Moreover this is an appeal against the acquittal where interference is not permitted merely because more than one conclusion is possible to be drawn on the basis of the evidence on record. The learned Sessions Judge has taken a possible view that the guilt of the Accused is not established. Merely because there can be another conclusion which can be drawn is no ground to interfere in an appeal against acquittal.

Thus the result of the Appeal becomes inevitable.

21. Before we part with the Judgment, with a great deal of anguish we want to record certain disturbing aspect of the matter. The Courts have repeatedly recorded that the crime again women and rape in particular is on the increase. Very little concern is normally shown for the honour of a women. The present case shows the remarkable indifference on the part of the Medical Officer and the investigating machinery towards the victim of sexual crime. In this connection it is necessary to refer to the medical certificate issued by the Medical Officer of the Civil Hospital at Thane. We have already referred to his evidence in which he has stated that there were only four injuries on the person of the accused and from the said evidence what we have noted is that there were no injuries on the back, buttucks, thighs and legs of the victim. The medical certificate which is exhibited on record issued by P.W.4 shows the indifferent and callous manner in which the Medical Officer in a Government Hospital has treated the victim of a sex crime. The said certificate reads thus:

"Impression:-

. Since Patient is experience and habitual at sexual intercourse, it is difficult to predict whether she has had forceful sexual intercourse in the recent past or not. However, she does not show signs of fresh sexual intercourse.

Patient shows following external injuries.

1) Abrasion confession over angle of left mandible 1-1/2" x 1/4" caused by hard and blunt object.
2) Abrasion over dorsum of (Rt.) elbow 1/2".
3) Abrasion over medial aspect of (Rt.) which 1".
4) 4 small scratch marks over dorsum of (Lt) elbow. Abrasions are caused by rough surfaced object and all injuries are of the age 24-48 hours." (Emphasis supplied).

The certificate merely stated that the patient has shown injuries described therein. Neither the certificate nor the deposition of P.W.4 shows that the said Medical Officer has examined the victim with the sensitively which is required for dealing with the victim of a sex crime. The medical certificate as well as the deposition does not disclose any attempt made by the Medical Officer to find out whether there were injuries on any other

parts of the body of the victim. The Medical certificate shows that the victim disclosed four injuries to the Medical Officer on her elbows and wrist. There is no attempt made by the Medical Officer to find out any other injury on the body of the victim. The Medical Officer was perhaps ignorant of the obvious fact that such a victim will not be in a state of mind to disclose injuries on certain parts of her body, Such a victim has to be examined considering the fact that she must be in a state of tremendous shock. It was the duty of the the Medical Officer to make inquiry from the victim or from the Police about the nature of the crime. He was obviously aware about the allegation that she was a victim of sex crime. A very sensitive handling of the victim was expected on the part of the Medical Officer. However, he has examined the victim in a very mechanical manner without being aware that as a Medical Officer he will be a very important witness and it was his duty to see that the truth was recorded. The Apex Court has said that it is duty of the Court to deal with the cases under section 376 of IPC with utmost sensitivity. There is no reason why the same observation should not be made applicable to the Medical Officers and investigating machinery. We are constrained to observe that the entire approach of the Medical Officer was mechanical and he was not alive to the problems of the victim of a sex crime.

He should have been more alert and he should have examined the victim keeping in mind that she has suffered a sex crime. We are really disturbed about the manner in which the Medical Officer has acted.

22. The Investigating Officer has stated that on 29th April 1985 itself the Accused were apprehended. By 1st May 1985 statements of all the witnesses were recorded. He has stated that he forwarded samples of blood and semen of the accused to the Chemical Analyser on 9th May 1985. The document at Exh.28 shows that the Accused were sent to the Medical Officer, Civil Hospital, Thane on 29th April 1985 and it is obvious that their semen and blood samples were collected on the same day. It is surprising that the samples were sent to the Chemical Analyser after 8 days. The Chemical Analyser seems to have taken his own time and submitted his report on 31st July 1985. In the report he has stated that the blood group of the blood samples and the semen samples of the accused cannot be determined. The inconclusive result of the Chemical Analyser seems to be only on account of unexplained and abnormal delay on the part of the investigating machinery and the Chemical Analyser's office. As a result of inconclusive report of the Chemical Analyser one of the circumstances which could have led to the establishing of the guilt of the accused

could not be established. We fail to understand as to why the Investigating Officer required 8 days time to forward the samples to the Chemical Analyser and why Chemical Analyser took 67 days thereafter for analysing the samples.

23. This is one of those cases where it is unsafe to convict the accused on the sole testimony of the Prosecutrix. Therefore, unless assurance can be drawn from other evidence on record, the Court cannot convict the Accused. In the present case, the medical evidence gives no assurance to the version of the Prosecutrix. The reason is that the Medical Officer has not done his duty. Detection of blood group of the Accused was one more important factor. In that behalf there is total failure on the part of the investigating machinery as well as the Chemical Analyser's office. In essence the medical examination of the victim of offence is also a part of the investigation. If the investigating machinery does not act with sensitivity which is required in such cases, the result of the prosecution will become inevitable.

24. Blood samples of the accused were sent by the Investigating Officer to the Chemical Analyser for determination of blood group. The blood samples are

always sent to the Chemical Analyser for taking benefit of section 293 of the Cr.P.C. so that the report can be proved without examining the expert. That does not mean that the investigating machinery cannot use any other available machinery. In the present case, the blood samples were collected by the Medical Officer of the Civil Hospital in a District place. Apart from sending the blood samples to the Chemical Analyser, the Investigating Officer could have taken a report from the Pathologist if available in the Civil Hospital. The report could have been proved by examining the Pathologist. Instead of doing that the Investigating Officer waited for a period of 9 days to dispatch the samples to the Chemical Analyser. If the Investigating Officer was alive to the sensitivity of the crime, he could have insisted that the Prosecutrix should be examined by a lady doctor if immediately available in the Civil Hospital. In case of such victim of sex crime, it is advisable that the victim is examined by a lady doctor if available immediately. We are not suggesting that Investigating Officer should wait to get the victim examined till a lady doctor is available. If at the Government Health Centre or at Cottage Hospital/Civil Hospital if lady doctor is immediately available, who is competent enough to examine the patient, the Investigating Officer and the Hospital authorities should

ensure that such a victim is examined by the lady doctor. We also feel it necessary that the Medical Officer concerned should ascertain the nature of the alleged crime so that he can properly examine the victim keeping in mind that he is playing a very important role in the investigation of the crime. The Medical Officer concerned must make a detailed examination of the victim and note the following particulars:

(i)	Age	
(ii)	Height.	
(iii)	Weight.	
(iv)	General body built.	
(v)	Secondary sex characters	Developed/ not Developed.
(vi)	Examination of clothes: Whether there are semen or blood stains.	
(vii)	Examination of evidence of any violence on the body. Injuries on Breasts/cheek/lips/thighs/Genitals and other parts of the body.	
(viii)	Examination of private parts Vulva, Vagina, Hymen, perinium, fourchette.	
(ix)	Matting of pubic heir due to semen.	
(x)	Presence of seminal stains on the genitals.	
(xi)	Result of P.V.examination if such examination is possible.	

The Medical Officer must ensure that blood sample of the victim is taken for ascertaining her blood group. Moreover wherever necessary pubic heir must be sent for

pathological examination. He should also sent vaginal smeer for examination. It is for the Director of Health to issue necessary directions in that behalf.

25. Before we part with the judgment, it is necessary to refer to certain observations made by the learned Sessions Judge. The learned Sessions Judge has meticulously referred to each and every statement made by the Prosecutrix in examination-in-chief and in the cross-examination. The learned Judge has referred to every minor discrepancy and contradiction in the evidence. We are of the view that in a matter like this every discrepancy or contradiction will not defeat the prosecution case. We cannot be ignorant of the inherent limitations on the ability of the Prosecutrix to depose precisely about the incident which has the result of affecting her dignity and honour. We cannot be oblivious to the fact that the social conditions in our country do not make victim of such offences courageous enough to tell everything which has happened with meticulous precision before the Court of law.

26. The learned Sessions Judge has also come to the conclusion that there is inordinate delay in lodging the complaint. Looking to the seriousness of the offence like this, there is bound to be some delay. The only

question which needs to be examined is whether such a delay is explained by the prosecution. The learned Sessions Judge should have considered the explanation of the prosecution meticulously and carefully. The learned Sessions Judge has not considered the fact that the Prosecutrix could not have approached the Police Station late in the night especially when she was staying alone in her hut.

27. The learned Judge has referred to the fact that no semen stains were found on the under-garments of the accused No.2. The learned Judge should have appreciated the fact that the F.I.R. was lodged more than 12 hours after the incident. There is a long gap between the incident and the time when the clothes on the person of the Accused were seized. After the incident the Accused had gone back. There is every possibility that the Accused may not be wearing the same clothes which they were wearing at the time of incident. Considering all these facts, the learned Judge could not have given importance to the fact that semen stains were not found on the under-garments of the Accused. We must note here that the entire approach of the learned Sessions Judge was not correct.

28. The Appeal is liable to be dismissed and is

accordingly dismissed. Bail bonds of the Respondents stands cancelled.

29. We direct that a copy of this Judgment shall be forwarded by the office to the Secretary of the Public Health Department who will consider the observations made in paragraph No.24 of this Judgment and take appropriate action.

(Smt.Ranjana Desai, J.)

(Abbay S.Oka, J.)